IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 644 of 2005 (O&M)

DATE OF DECISION: 27.8.2007

Devender Goel

…Appellant

Versus

Assistant Commissioner of Income Tax, Investigation Circle-II, Ambala

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Pankaj Jain, Advocate,
for the appellant.

JUDGMENT

M.M. KUMAR, J.

The assessee has approached this Court by filing instant appeal under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), challenging order dated 13.12.2004, passed by the Income Tax Appellate Tribunal, Chandigarh Bench (B), Chandigarh (for brevity, 'the Tribunal'), in M.A. No. 91/Chandi/2004. The aforementioned Misc. application filed by the assessee arises out of order dated 7.1.2002, passed by the Tribunal in IT. SS. A No. 1181/Chandi/1996 for the block period 1986-87 to 1996-97. The assessee has claimed that the following questions of law would arise for our determination:-

"i. Whether under the facts and circumstances of the case the Tribunal order rejecting the application u/s 254(2) by not allowing rectification of mistake apparent from the records that the investment on account of the shop has been made by Smt. Sangeeta Goel being verifiable from her record is perverse?.

ii. Whether under the facts and circumstances of the case the Tribunal is justified in law to have confirmed the addition in the hands of Davinder Goel when the said property stands declared in the hands of Smt. Sangeeta Goel as on 31.03.1995 before the date of the search i.e. as on 28.09.1995.?

iii. Whether under the facts and circumstances of the case the addition if any was to be called for in the hands of Smt. Sangeeta Goel and not in the hands of the appellant, Davinder Goel ?.

Brief facts may first be noticed. On 28.9.1995, the department conducted a search and seizure operation, under Section 132 of the Act, at the residential premises of the assessee and various valuable items amounting to Rs. 16,83,300/- were found, out of which valuables worth Rs. 15,67,190/- were seized. Other than this, books of accounts and other documents were also found and seized. It is apposite to mention here that till March, 1995 the assessee was carrying on the business of jewellery under the name and style of M/s Sagar Jewellers at Kurukshetra. The said business was wound up and

the assessee joined as Manager in the firm of M/s New Sagar Jewellers, which was proprietary concern of his wife Smt. Sangeeta Goel. The Assessing Officer after issuing notice, dated 31.1.1996, under Section 158BC of the Act called for the return of income for the block period in question. The assessee filed his return of income on 5.7.1996 declaring undisclosed income at nil. Assessment proceedings were completed on 30.9.1996 at an undisclosed income of Rs. 39,23,124/-.

Against the order dated 30.9.1996, passed by the Assistant Commissioner of Income-tax-respondent, the assessee filed an appeal before the Tribunal impugning various additions made by the Assessing Officer, which was partly allowed vide order dated 7.1.2002 (Annexure A/6). The appellant thereafter filed a miscellaneous application bearing No. 91/Chandi/2004 for rectification of order dated 7.1.2002. According to the pleadings it was asserted that the additions sustained vide para 88 amounting to Rs.3,65,000/- could not have been made had the Tribunal considered the submissions of the appellant that the property for which title deed was registered for Rs.1,25,000/- in the name of Smt. Sangeeta Goel w/o the appellant was duly recorded in the books of account of Smt. Sangeeta Goel on 30.12.1994 and the same was duly shown in her balance sheet as on 31.3.1995 for a total amount of Rs. 1,44,500.00. It was further submitted that if any addition was required to be made for lack of evidence furnished by the appellant then Mr. B.M.Behl could have been produced for cross-examination by him who could have verified the payment actually made to the extent of Rs. 3,65,000/- then the addition could have been sustained in the hands of Sangeeta

Goel wife of the appellant only to the extent of balance amount of Rs. 2,40,000/- and not in the hands of the appellant.

The Tribunal after considering both the submissions came to the conclusion that no such argument was raised that the property in fact belonged to Sangeeta Goel nor any such document was furnished by the assessee which could show that the property in question did not belong to the assessee himself. The Tribunal also opined that a specific query was put to the counsel for the assessee regarding his or any of his partner's presence at the time of hearing which was replied in the negative. On that additional ground also the Tribunal concluded that information received from the counsel could not constitute a basis for seeing rectification as the rectification application had not been filed through Shri Dharam Pal Gupta. Accordingly, the rectification application was dismissed.

After hearing learned counsel at some length we find no error in the order dated 13.12.2004 passed by the Tribunal refusing to rectify its order dated 7.1.2002. Once it has been found as a fact that such an argument had not been raised then it was for the appellant to show to the contrary. Moreover, the rectification application was filed through a counsel different than the one who had appeared in the main case i.e. ITA (SS) No.1181/Chandi/1996 decided on 7.1.2002 (Annexure A/6) for the block assessment for the years 1986-87 to 1996-97. A different counsel would not be able to authenticate as to whether a particular argument was advanced which has not been considered by the Tribunal. In that regard, we may place reliance on a judgement of Hon'ble the Supreme Court in the case of Tamil Nadu Electricity Board v. N.Raju Reddiar (1997) 9 SCC 736. Therefore, we

do not find any substance in the appeal and the same is liable to be dismissed.

For the reasons afore-mentioned this appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 27, 2007
Pkapoor/okg